

**Statement of the
NATIONAL AMERICAN INDIAN COURT JUDGES ASSOCIATION
Mary T. Wynne, President**

before the
Senate Indian Affairs Committee
on S. 1508
The Indian Tribal Justice System Technical and Legal Assistance Act of 1999

September 29, 1999

INTRODUCTION

Good morning, Chairman Campbell and distinguished members of the Senate Indian Affairs Committee. Thank you for the invitation to come before you this morning to talk about a topic that is a key to continued growth and maturation of the judiciary in Indian Country.

My name is Mary Wynne. I am an enrolled member of the Rosebud Sioux Tribe. I sit on numerous tribal benches and I am an attorney licensed in the states of Washington, North Dakota, and South Dakota. I am current President of the National American Indian Court Judges Association, and the immediate past-president of the Northwest Tribal Court Judges Association.

THE NATIONAL AMERICAN INDIAN COURT JUDGES ASSOCIATION

The National American Indian Court Judges Association, commonly referred to as NIJA, is a voluntary national representative membership association. It is the sole national voice of tribal court judges, and its membership is comprised of current and former tribal court judges throughout the United States. For thirty years, NIJA has provided quality training, albeit underfunded, and technical assistance services for tribal justice systems.

While I am here today in my official capacity as president of the NIJA, I am also here professionally as a Tribal Court Judge and Appellate Court Justice. During my career in Indian country, I have sat on the bench for 17 tribal courts at the trial level and for 11 tribes at their "Supreme Court". I can tell you, from sitting in many small, underfunded, and geographically remote tribal courts, that tribal court membership associations are generally the primary source of information and technical assistance for the numerous tribal justice systems who, in Indian country, stand at the front line of individual and fundamental rights for both Indians and non-Indians. These organizations are frequently the sole available source for fundamental tools courts need to fairly and independently adjudicate matters that come before their respective benches. I strongly believe that S. 1508, the Indian Tribal Justice System Technical and Legal Assistance Act of 1999, has the potential to provide tribal court personnel associations with the funding needed to ensure future crucial technical assistance in a manner that keeps pace with the rapidly expanding caseloads they are now facing.

TECHNICAL ASSISTANCE BY TRIBAL COURT MEMBERSHIP ORGANIZATIONS

Culturally relevant training and technical assistance for Tribal Courts is difficult, if not impossible to find. As you can see from the attached agendas of both a national and a regional s associations, we provide this assistance on budgets that can be referred to as shoestring, at best. For instance, the annual dues of \$35 per member for the Northwest Tribal Court Judges Association and the meeting fee of \$50.00 covers only meeting rooms costs for judges to hear what is may times the only presentation the will hear on such things as rules of evidence, fundamentals in opinion writing, search and seizure law, and other topics. Topics such as these are critical to every judge, and regular updates and study is needed to provide the solid foundation of legal training and understanding of legal theory needed by every judge to adjudicate their cases in a manner consistent with due process.

Tribes have limited resources. Tribal legislators can only provide what they have. Hence, these membership meetings and association training sessions are frequently the only training available to the people sitting on a tribal bench. Professional CLE courses, required by most state bar associations are typically out of the financial reach of tribal judges and justices, even though required of the attorneys who practice before them.

I am able to come before you today and support this bill because of the first-hand experience I have had working with and being an officer for the very national and regional organizations that would be affected by this bill. I have helped develop and implement training programs to assist tribal judges, while at the same time keeping a close eye on the limited funds available for such things as the copying of documents to provide judges with reference materials they can take with them back to their courts. I can honestly say to you that the meager funds of tribal court organizations have, in the past, been spent effectively for programs that judges themselves request so they can competently handle their docket. These Associations then seek expert trainers and presenters who volunteer time and cover their own travel expenses. However, when a topic is requested by the judges, and volunteers cannot be found, or travel expenses need to be paid, the subject has to be crossed off the list of training topics.

SUPPORTING TRIBAL COURTS IS COST EFFECTIVE

The benefits of funding S.1508 are not limited to meeting a gaping need in Indian country. They extend to the Federal justice system as a whole. I would like to illustrate this with a story. Tomorrow morning we rise from our beds to find tribal courts no longer exist. Matters that arise out of the 500 plus tribes in the United States, whether they be juvenile, civil, criminal, domestic relations, cases of domestic violence, mortgage foreclosures, traffic infractions, probates or any of the vast panorama of cases handled by tribal courts, from "dog at large" to complex commercial litigation, are then adjudicated in the Federal District Courts. Just one Federal court handling the caseload of a single tribal court such as the Colville Tribal Court would experience budget shortfalls in excess of \$15.8 million. If the cases from this tribal court, only one of the 150 such courts, were transferred to the local state district or superior court, they must come accompanied by a check for nearly \$1 million per year. So, when considering for the first time directing money to regional and national associations that support tribal courts, consider not only that these organizations make continuation of due process and fair adjudication of disputes possible. You must also look at the direct benefits to all of your constituents.

LEGAL INFRASTRUCTURE AND ECONOMIC DEVELOPMENT

Another affect that must be examined is the role of legal infrastructure in economic development. A technically proficient and legally competent judiciary is as much a requirement in the infrastructure foundation supporting economic growth as are roads, water, telephones or electricity. As reservation economies expand, an evolving legal environment will come hand in hand. More and more cases involving commercial litigation, financing and banks, development contracts and their attendant real property disputes, zoning and environmental challenges and the broad spectrum of challenges presented by a growing and healthy economy will make their way through tribal court house doors. The \$35 annual dues paid into a regional judges association will not be sufficient to provide the resources necessary for presenting tribal court staff with the continuing legal education required to remain current with the changing legal environment. If the goal of a self-sustaining economy is to be achieved in Indian country, all infrastructure requirements must be in place lest we leave the reservations with weak foundations that are programmed for failure.

THE INDIAN TRIBAL COURTS FUND

NAICJA also requests that this Committee consider technical problems related to the Department of Justice's Indian Tribal Courts Fund. Established in FY1999 as part of the Indian Country Law Enforcement Initiative, \$172 million in proposed funding under the Indian Country Law Enforcement

Initiative was requested to provide direct law enforcement funding. The predictable increase in tribal court caseloads was not met. Congress appropriated most of the FY 1999 funding requested for the Indian Country Law Enforcement Initiative, but only \$5 million for the Indian Tribal Courts Fund. For FY 2000, the Senate has appropriated the same \$5 million as FY 1999, but the House has again provided for zero funding of this critical Indian Tribal Courts Fund. Moreover, NAICJA is disturbed to learn that the House has apparently based this zero funding upon their contention that the Indian Tribal Courts Fund has not been formally authorized. We would request that the Committee review this issue and, if necessary, consider amending S. 1508 to add on a formal authorization of the Indian Tribal Courts Fund.

CONCLUSION

For all of the above reasons, the National American Indian Tribal Court Judge's Association urges passage of S.1508. We urge support of the volunteer tribal personnel membership organizations that provide ongoing technical assistance and resources to the tribal judiciaries who woman the trenches of due process and fundamental fairness for all citizens of Indian country.